

**Bandicoot Corporation d/b/a WordsWorth and
United Automobile, Aerospace & Agricultural
Implement Workers, AFL-CIO, District 65.**
Case 1-CA-27619

April 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On August 2, 1991, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,¹ findings, and conclusions as modified and to adopt the recommended Order.

The judge found that the Respondent discharged Christina Martinez because of her continued support of the Union's efforts to organize the Respondent's clerks. We agree with the judge's conclusion that Martinez was discharged in violation of Section 8(a)(3) and (1) of the Act because we find, for the following reasons, that the General Counsel made a prima facie showing that Martinez' union activity was a motivating factor in the Respondent's decision to discharge her and that the Respondent failed to show that it would have discharged Martinez even in the absence of her union activity.²

The essential facts according to the credited testimony are as follows. In the summer of 1989, union organizers began to solicit membership outside the Respondent's store and the Union notified the Respondent in writing that it was conducting an organizing campaign. In August 1989, the Respondent distributed a letter to all the employees which cautioned the employees against the Union's claims and promises.

Christina Martinez worked as a clerk for the Respondent since April 1988 and was one of the most senior clerks at the store.³ Not long after the distribution of the Respondent's August letter about the Union, Martinez told General Manager Silva that she

thought the letter had a condescending tone and was insulting.

A short time later, a group of employees who favored unionization drew up a statement of position, which Martinez posted in the cloakroom. The document stated that the motivation to unionize came from the employees who currently had "no formal avenue" through which they could express their concerns about matters affecting their daily work. The letter was signed by about 20 employees. Martinez' signature was not on the document.

Around the same time, an antiunion committee of the Respondent's employees was formed. It posted a letter dated August 29, 1989, on the door of the cloakroom at the store which stated that the committee would propose to management that an employee action committee be formed as a means for employees to receive the benefits of their collective voice without the penalties and inflexibility of a union contract.

On September 6, 1989, a large meeting took place at a nearby church, sponsored by the members of the antiunion group. Martinez attended and suggested that a comparison be made of the wages and benefits at WordsWorth with those at other Harvard Square bookstores.⁴ The idea was adopted, and Martinez conducted the study.

Late in September 1989, Martinez had a conversation with Hillel Stavis, the owner of the store, concerning the Union. She stated that a number of problems had arisen because the store had grown from a small family operated organization to a large operation. She asserted that informal relationships had to be formalized and employees ought to be organized. Stavis told her that he had been an organizer for the Union years before when he was a clerk at another store, but he came to realize that he was harming the store by working for the Union. Martinez disagreed, arguing that a formalization of the relationship between management and employees would benefit the store.

On November 9, 1989, the Respondent distributed a four-page letter to the employees announcing revisions to its basic wage and benefit package. On the same day, Stavis held an employee meeting to discuss the new wage and benefit program. During the meeting Martinez again asserted the need for a formalized relationship between management and employees and for employees to have representation. She suggested that everyone read a book outlining Japanese management styles to gain a better understanding of the problems facing the store.

After the meeting, Stavis told Martinez that he wanted to speak with her but did not establish a time. About 2 weeks later, Martinez asked to speak with Stavis. When she met him in his office, she again told

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² *Wright Line*, 251 NLRB 1083 (1980).

³ The average clerk remains on the payroll only 6 to 8 months.

⁴ The Union represents the clerks at several bookstores around Harvard Square.

Stavis that there should be a formal organization and representation at forums at which employees could discuss their problems. Stavis replied, "[T]he Union is finished." He then complained to Martinez about errors on the comparative table of wages and benefits circulated to employees, referring to the table as "your chart."

A day or two later Martinez brought up the same subject with General Manager Silva in his office. Silva told her "Your speech was ridiculous," when referring to her remarks at the November employee meeting. He then said that all the managers complained about her work. When Martinez said no manager had ever complained to her, Silva said, "Well, probably they don't dare tell you." Martinez then asked him to tell any manager who saw her doing something wrong to tell her about it on the spot.

About 6 weeks later, on January 6, 1990,⁵ Martinez was working on the second floor of the store when Stavis told her to stop reading a book and to wait on customers instead. (The Respondent has a written rule against reading while on duty.) Martinez replied that she was not reading the book but merely looking at the index as she was shelving it. She put the book away and waited on customers. Stavis made an informal note about this incident and put it in Martinez' personnel file.

On February 15, Martinez was reprimanded by Assistant Manager Parker for having exceeded the bounds of proper information disclosure to a customer.⁶ On February 22, Martinez was given a written warning regarding the incidents of reading on the job and information disclosure.

On March 20, Martinez submitted a written reply to the warning. She argued that her conduct was not accurately described in the warning and stressed that it was only after she criticized Stavis' letter cautioning against unionization that her work had been criticized. Martinez also asserted that the Respondent's method of management was "losing ground as the modern world of business moves from authoritarian hostility to democratic participation."

Stavis testified that he was outraged by her written reply and felt that he should have fired her on the spot but decided instead to leave the question to assistant managers, who meet periodically to evaluate employees as other matters concerning the operation of the store.

Before the meeting with the assistant managers took place, Stavis told Martinez to offer assistance to customers. Martinez replied that clerks ought to be careful in making specific recommendations to academics who

might take offense at receiving such information from a clerk. Stavis did not specifically tell Martinez to ask customers, "May I help" and Martinez did not refuse to approach customers for that purpose. She had, in fact, offered such help to customers throughout her employment at the store.

In mid-April, eight assistant managers rated Martinez on a two-page "confidential employee evaluation" form used by the Respondent for this purpose. The judge found that there were recurring alterations on the forms and concluded that they had been tampered with. None of the assistant managers indicated on the forms, or elsewhere, that Martinez should be discharged. On the issue of courtesy and helpfulness to customers, four rated her above average, three rated her average, and one rated her below average.

In early April the Respondent issued an employee handbook. Martinez asked Human Resources Director Smith to have lunch with her and discuss Martinez' objections to the handbook. At the lunch meeting, Martinez complained to Smith about such matters in the handbook as the substitution policy governing the rights of employees to switch shifts and the failure to include a grievance procedure. Martinez asserted that the Respondent needed to conduct periodic employee meetings to discuss complaints. She told Smith that she was going to meet with other employees to discuss these matters so that the employees could come up with a proposal. She also told Smith that a union was important because the employees otherwise would be unable to bring their concerns to the attention of management.

Smith reported this conversation to General Manager Silva. On April 26, some 2 weeks later, Martinez was called into Silva's office. In the presence of Stavis, Silva told Martinez she was discharged because of her work performance and her cash register sheets were short. When Silva produced the wrong cash register sheets, Stavis told Martinez that the cash sheets were not a problem. Instead, the Company was dissatisfied with her work. In lieu of 2 weeks' notice, Martinez was given a check for 2 weeks' earnings and accrued vacation pay. When she asked Stavis, "[I]s this the way you treat your employees?" he replied, "You are a special case."

We conclude, on the basis of these facts, that the General Counsel established a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the Respondent's decision to discharge Martinez. First, the General Counsel demonstrated that the Respondent knew of the Union's organizing efforts and of Martinez' support for the Union. It is undisputed that the Union informed the Respondent in writing about its campaign and that the Respondent subsequently distributed a letter to employees acknowledging its awareness of the Union's

⁵ All subsequent dates are in 1990 unless otherwise indicated.

⁶ Martinez had not received training on the retrieval of computerized information and was supposed to refer customers to a trained clerk.

efforts. It is also clear that the Respondent was aware of Martinez' support for the Union. Martinez told General Manager Silva that the Respondent's letter to employees about the Union's organizing effort was insulting. She also expressly disagreed with Stavis, the owner of the store, when Stavis in reference to his experience at another store, told her that he had come to realize that working for a union harmed the store. Martinez argued, instead, that a formalization of the relationship between management and employees would benefit the store. At an employee meeting called by Stavis, Martinez insisted openly that the employees needed representation. She also told Stavis at a subsequent private meeting that there should be a formal organization. Finally, Stavis showed his knowledge of Martinez' actions in support of the Union when he referred to the comparative table of wages and benefits distributed to employees as "your chart."

In finding that the General Counsel established that the Respondent had knowledge of Martinez' union activities, we reject the Respondent's argument that it was aware only that Martinez held a belief that informal relationships between management and the employees needed to be formalized and was unaware of her interest in the Union. Stavis' responses to Martinez on two occasions make clear that he equated Martinez' interest in a formalized relationship to interest in unionization. Thus, when Martinez spoke of the need for a formal relationship between management and employees in her September 1989 meeting with Stavis, Stavis referred to his own experiences with a union and his realization that working for the Union harmed the store. Similarly, when Martinez again asserted the need for a formal organization in her November 1989 meeting with him, he replied, "[T]he Union is finished."

We further find that the General Counsel adduced evidence sufficient to support the inference of unlawful motivation in the discharge of Martinez. The Respondent repeatedly attempted to discourage Martinez from supporting the Union. Stavis told her that his experience showed that working for the Union harmed the store. At a later encounter when Martinez continued to propose representation for employees, Stavis told her the Union was "finished."

After the Respondent's efforts to discourage Martinez' union sympathies failed, Martinez began to receive criticisms of her work for the first time during her tenure at the store. The timing of the Respondent's criticisms, reprimand, and discharge of Martinez gives rise to the inference that the Respondent's disciplinary actions were triggered by Martinez' continued support for the Union. Thus, in late November 1989, when Martinez again brought up the issue of representation, Silva first ridiculed the remarks she had made in support of representation at an employee meeting and then

told Martinez that all the managers complained about her work. The first complaint about Martinez' work, therefore, was made in the same conversation where her views on representation were ridiculed. After Silva's initial complaint, a sequence of disciplinary actions toward Martinez occurred. On January 6, Stavis warned Martinez about reading on the job. On February 15, Assistant Manager Parker reprimanded Martinez for improper information disclosure to a customer. On February 22, Martinez received written warning about reading on the job and improper information disclosure. On April 26, Silva told Martinez that she was discharged because of her work performance. Martinez' dismissal occurred only a few weeks after Human Resources Director Smith reported to Silva a conversation between Martinez and Smith. Martinez had told Smith that she was going to meet with other employees to discuss the lack of a grievance procedure in the Respondent's new employee handbook and the need for the Respondent to conduct periodic employee meetings to discuss complaints, so that the employees could come up with a proposal. She had also told Smith that she felt that a union was important because it would enable employees to bring their concerns to the attention of management.

We find that this sequence of events suggests that Martinez' vocal and persistent support for union representation provoked the Respondent's first criticism of her work. The timing of the Respondent's decision to discharge Martinez, coming shortly after Smith reported Martinez' intention to speak with other employees about a grievance procedure and periodic meetings to discuss complaints, and Martinez' belief in the importance of unionization, further suggests that the Respondent wished to prevent any renewal of employee discussion of the need for representation at a time when it had set forth a new program.

For all these reasons, we conclude that the General Counsel established a prima facie showing that Martinez' union activity was a motivating factor in the Respondent's decision to discharge her.⁷ We further conclude that the Respondent failed to meet its burden of establishing that it would have discharged Martinez even in the absence of her protected activity.

The Respondent asserts that it discharged Martinez solely because of her poor job performance. It relies particularly on the January 6 incident of reading on the job and the late March incident when Martinez alleg-

⁷ In so finding, we disavow the judge's reliance on the Respondent's increases of wages and benefits during the organizing campaign as evidence of animus. These increases were not alleged to be unfair labor practices and there is insufficient evidence regarding the circumstances in which they occurred to support an inference that they were evidence of antiunion sentiment.

We also find it unnecessary to rely on the Respondent's statements of opposition to the Union as evidence of animus.

edly refused an order to approach customers and offer help.

We note at the outset that the Respondent rarely discharges employees. Stavis stated, "We have an incredible record of not firing people." We also note that the breach of the rule against reading on the job is, according to the Respondent's admitted standard, a trivial infraction which had been engaged in by many employees over the years and which normally had not led to formal discipline. Accordingly, the Respondent's reliance on Martinez' infraction of the rule against reading to discharge her is a departure from its past practice and does not provide persuasive support for the Respondent's defense. Instead, the use of a trivial infraction to justify the uncommon action of discharging an employee strongly suggests that the infraction was not in fact relied on, but rather was seized on as a pretext for discharge.

The Respondent's second ground for discharge is not supported by the credited testimony. The Respondent asserts that Martinez refused to comply with Stavis' order to offer customers help in selecting books. However, according to the credited testimony, when Stavis spoke to Martinez about approaching customers, Martinez told him that store clerks should be careful in recommending specific titles to academics because they might take offense at receiving such information from a clerk. Stavis never ordered, and Martinez never refused an order simply to ask customers, "May I help?" Further, when Martinez was subsequently evaluated by eight managers, she was rated in the category of courtesy and helpfulness as above average by four, average by three, and below average by one. These evaluations undercut the Respondent's contention that Martinez was discharged for discourtesy or refusal to help prospective buyers.⁸

The Respondent's departure from past practice with regard to the incident involving reading on the job and the absence of credible evidence that Martinez refused to be helpful to customers demonstrate the Respondent's failure to meet its burden of showing that it would have discharged Martinez regardless of her union activity. We, therefore, agree with the judge's finding that Martinez was discharged in violation of Section 8(a)(3) and (1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Bandicoot Corporation

⁸The validity of the evaluations is questionable because the judge found that the dates had been altered and that other similar alterations indicated that the forms had been tampered with. We note that even in the face of tampering Martinez' ratings concerning courtesy and helpfulness do not show a perceived problem with her performance. Nor is there any recommendation on these forms, or elsewhere, that her work performance was so poor as to warrant dismissal.

d/b/a WordsWorth, Cambridge, Massachusetts, its officers, agents, successors, and assigns, shall take action set forth in the Order.

Joseph F. Griffin, Esq., for the General Counsel.

Mark Portnoy, Labor Relations Consultant of Westbury, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me at Boston, Massachusetts, on an unfair labor practice complaint, issued by the Regional Director of the Board's Region 1,¹ which alleges that Respondent Bandicoot Corporation d/b/a WordsWorth,² violated Section 8(a)(1) and (3) of the Act. More particularly, the complaint alleges that the Respondent discharged Cristina Martinez because of her activities in support of the Union. The Respondent denies the allegations and asserts that Miss Martinez was discharged because she read books on the job while she should have been working and because she refused to greet customers, as instructed. On these considerations the issues were joined.³

FINDINGS OF FACT

II. THE UNFAIR LABOR PRACTICES ALLEGED

For the past 15 years the Respondent has operated a bookstore near Harvard Square in Cambridge, Massachusetts. It is 1 of approximately 25 bookstores in this locality. The Respondent stocks about 85,000 titles and was established to serve the academic communities of Harvard and other nearby universities as well as the public at large. It employs about 70 clerks and related classifications of employees. The president and owner of the Respondent is Hillel Stavis, who exercises active, hands-on supervision of the entire operation.

While several large bookstores on or near Harvard Square are unionized, the Respondent is not. Its bargaining unit has an unusual mix of employees. Most of the Respondent's book clerks are college graduates and many hold post-

¹The principal docket entries in this case are as follows:

Charge filed by United Automobile, Aerospace & Agricultural Implement Workers, AFL-CIO, District 65 (Union) against the Respondent on September 12, 1990, and an amended charge filed on October 31, 1990; complaint issued by the Regional Director for Region 1 against the Respondent on November 13, 1990; Respondent's answer filed on November 23, 1990; hearing held in Boston, Massachusetts, on April 15 and 16, 1991; briefs filed with me by the General Counsel and the Respondent on or before July 1, 1991.

²Respondent admits, and I find, that it is a corporation which maintains an office and place of business in Cambridge, Massachusetts, where it is engaged in the retail sale of books, magazines, and periodicals. During the calendar year ending December 31, 1989, it derived gross revenues from this business in excess of \$500,000, and purchased and received at its Cambridge, Massachusetts place of business directly from points and places located outside the Commonwealth of Massachusetts goods and materials valued in excess of \$50,000. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

³The transcript is noted and corrected.

graduate degrees. The vast majority are in the 20–32 age group and have come to work for the Respondent as their first or second job following college. The Respondent has consistently experienced an enormous turnover among its employees. The average clerk remains on its payroll only 6 or 8 months before moving on to other employment.

Discriminatee Cristina Martinez did not entirely fit this employment profile. Martinez started to work for the Respondent in April 1988. She is now 54 years old and remained with the Respondent until April 26, 1990, when she was discharged. Martinez holds a PhD in sociology. Since her discharge, she has become a visiting professor of sociology at Brandeis University. At the time of her discharge by the Respondent, she was earning \$7.48 per hour as a clerk. Among her duties were stacking books on shelves, greeting customers and assisting them in finding books, and operating the cash register. Unlike most of the bargaining unit employees, Martinez worked for the Respondent for 2 years. As a result of this tenure, she was one of the most senior clerks at the store.

The Charging Party represents the clerks at several bookstores on and around Harvard Square. In the summer of 1989, it was contacted by one or more employees of the Respondent for the purpose of undertaking an organizing drive among the clerks at the Respondent's store. Union organizers contacted employees during breaktimes outside the store with a view toward soliciting membership and notified the Respondent in writing that it was in the process of conducting an organizing campaign. In August 1989, the Respondent distributed a letter, captioned "Dear Fellow Employee" which read as follows:

We are aware that District 65 is trying to organize WordsWorth and to do so it must obtain signed membership cards from a number of you.

You have the right to sign or not to sign these cards. If you sign a card, you are:

1. Accepting membership in District 65;
2. Allowing District 65 to represent you;
3. Agreeing to follow the rules, regulations, and by-laws of District 65
4. Accepting the right to be fined or have an assessment levied against you.

Organizers have been known to say anything to get these cards signed. The Union may promise you any thing, but only WordsWorth pays your wages and benefits and, with your help, can maintain job security.

No one has the right to harass or intimidate you into joining the Union and, if anyone has attempted to do this, please bring it to the attention of a manager. The Company can and will do everything possible to insure that you are treated with respect.

WordsWorth is firmly convinced that unionization would not be in your best interest. Therefore, we strongly recommend that you do not sign the membership card.

If a card has been shown to you, have you read it? Do you know how much the dues and initiation fees are of District 65? Do you know which rules and regulations you would be obligated to follow?

District 65 initiation fees are approximately \$6 per week and, in many cases, dues are double that per

week. Its initiation fees are approximately \$40 or more per person. It's no small wonder that the Union would like you to join its organization, since it receives a lot of money for its treasury.

We strongly believe that this Union is not in anyone's best interest. Unions can only ask employers to make concessions—but the law clearly states that the employer is under no duty to make any economic concessions at all. Has the Union explained that to you? If not, it is a proper question to ask.

Unions engage in a lot of salesmanship. Be careful. Check behind the scenes and check for the warranties. Find out what you will be receiving for your fees—what is guaranteed. When you have the answers to these questions we are confident that you will make an informed decision. We respect your right to make a decision based on all the facts supplied.

As always we would be pleased to answer any questions you may have. Please bring your questions to the attention of a manager.

Thank you again for your support and cooperation.

Not long after the distribution of this letter, Martinez had a conversation with Bruce Silva, the general manager of the store, in which she told Silva that she was disturbed by the condescending tone of the letter. She said that the letter was insulting and asked Silva who wrote it. Silva replied only that he did not write it.

Employees who favored unionization drew up a statement of position which discriminatee Martinez posted on the door to the employee cloakroom. The "Dear Coworkers" letter was signed by about 20 employees after it was posted, although Martinez was not 1 who did so. The letter read:

As you have probably heard, we are working to form a union at WordsWorth. The union we hope to affiliate with is District 65 of the United Auto Workers, which already represents three bookstore unions in Harvard Square: Reading International, Cambridge Booksmith, and Harvard Book Stores.

Management issued a memo to employees on August 18, stating its position against a union. Although we agree with management that each employee must make her/his own informed decision, we do not believe that management is fairly representing our efforts.

The *motivation to unionize* did not come from District 65; it *started with employees*. In talking with our coworkers we found we share many common dissatisfactions. New employees find it impossible to live on our starting salaries. Those of us who have been here longer feel too often unappreciated. None of us feel comfortable in bargaining for changes, because there is no clear method, no formal avenue, through which we can direct our concerns.

We work hard for WordsWorth. We share in the respect our customers show when they say we're their favorite bookstore, but we do not feel we share in the choices that are made about how the store is run, choices which affect our lives as employees.

All decisions are unilateral and are passed down to us. For example, there are no clear rules for raises or promotions. There is no procedure for voicing problems

or grievances. As things are structured now, we are all vulnerable to the whims of the owners and management. We have no decision-making power, no legal power, and no clear recourse in matters which affect our daily lives. We feel this is wrong.

That is why we are forming a union of WordsWorth employees. We believe a union will allow us to share in the power, to have a voice in the decisions that are made. We believe this is only right and fair, and that WordsWorth as a whole will benefit. We hope you will join us. So far, the organizing process had been exciting, because we have seen a tremendous amount of support among employees. We have information available for all eligible employees, and we hope that you will come to any one of us with questions and concerns. [Emphasis in the original.]

In addition to making written communications with the Respondent's employees, Union Representative Mark Swadling conducted informal meetings with employees at nearby cafes and cafeteria and attempted to contact others through direct solicitation by union adherents in the work force. Informal meetings continued into the spring of 1990, but no representation petition was ever filed.

An antiunion committee made up of store employees began to take shape. Like the union committee, it posted a letter on the cloakroom door at the store and solicited signatures of interested persons. About 25 signed the document, which is dated August 29, 1989. It read, in part:

During the past few weeks we have questioned whether a union is necessary and appropriate at WordsWorth in order to respond to our needs and concerns.

It has been demonstrated that additional lines of communication must be opened between employees and management. How we achieve that goal is crucial to the wellbeing of each and everyone at WordsWorth.

We are proposing the establishment of an Employee Action Committee whose purpose would be in part to provide a forum presenting grievances.

The Committee would be comprised of five to six WordsWorth employees: from the retail floor, from the office, and from the warehouse. . . . Each of these representatives would be elected by their peers. The group would meet once a month during store hours to discuss any problem or any issue. From there, the Committee would work directly with management to resolve problems.

We don't disagree with the basic goals of unionism. But the restricting nature of a contract between labor and management seems completely inappropriate at a place like WordsWorth. We are especially upset at the prospect of being locked into a raise schedule that does not provide for individual initiative and creativity. And now we know that our present salary increases (cost of living adjustment, scheduled reviews, significant bonuses and an across the board raise every January) outperform the best contract the Union has ever negotiated for a bookstore, it would be senseless to unionize.

The management here may not be perfect but they do have a pretty good record of listening to and carrying out our suggestions. What's really necessary is to

take our desires and complaints and channel them through this Committee.

In this way we could receive all the benefits resulting from our collective voice without the penalties and inflexibilities that go along with a union contract—and without dues, initiation fees, and potential fines.

A large meeting took place on September 6 at a nearby church under the sponsorship of the members of the antiunion group. Some assistant managers attended, as did some union adherents. During the course of this meeting, Martinez suggested that a comparison be made of the wages and benefits at WordsWorth with those at other Harvard Square bookstores. This idea was adopted eventually but not immediately.

Late in September, Stavis wrote a lengthy letter to employees outlining his feelings. Among other things he stated:

I'm not going to coerce or pressure anyone, or misrepresent myself or the past policies of WordsWorth—or, for that matter, the people attempting to bring a union to the store. Nor will I talk to anyone in a condescending or patronizing way by dragging out clichés about “how good we've been to you” or “the union has ulterior motives,” etc. etc. But some individuals want to paint us in colors that match the portrait they've drawn of the typical employer.

First of all, WordsWorth isn't like most companies—or bookstores—that find themselves the target of a labor organizing effort. WordsWorth is not the Pittston Mining Company. . . . We're not absentee owners.

Unlike most companies who react to a union drive, we have no intention of “cozying up” to you now that a union is being discussed. What I will ask of you is to judge us fairly.

If you're new to the store, you may not realize that we've always been involved with day-to-day issues in the store since day one and have been responsive to people's needs and complaints all along. Since we haven't formalized the benefits we offer, which was a failing on our part, doesn't mean that we haven't distributed those benefits fairly. Nor does it mean that we don't value your input.

He went on to outline existing benefits and advantages of working for the Respondent, including a health plan, dental coverage, bereavement pay, profit sharing, and school loans.

Late in September, Martinez had a personal conversation with Stavis concerning the Union. It took place at her initiation because she told him she wanted to share with him some of her concerns. She began by saying that there were a number of problems at the bookstore which had arisen because the store had grown from a small family organization to a large operation so that informal relationships had to be formalized and employees ought to be organized. She said that she had heard that the Respondent was going to put out an employee handbook, a statement to which Stavis reacted angrily, saying it was a lie and spelling out “L-I-E” for emphasis. She went on to say that the relationship between management and employees should be formalized. Stavis replied that he had been good to employees but Martinez in-

sisted that this was not the issue. Stavis told her that he had been a union organizer years before when he was a clerk at Booksmith, a competitor on Harvard Square, but he came to realize that, by working for District 65, he was harming the store. She disagreed, arguing that a formalization of the relationship between management and employees would benefit the store.

Martinez visited several of the larger bookstores in the Harvard Square area for the purpose of making a comparative survey of wages and benefits. She prepared (although she did not actually type) a two-page chart itemizing the Respondent's wages and benefits in contrast with those paid by other stores, most of which were unionized. An employee named Berry Madure drew up a letter, dated October 29, to which an employee survey was attached. The survey posed such questions as whether employees were satisfied with starting wages, frequency of pay raises, work practices, the existing company substitution system, fringe benefits, and various other items. He asked that employees fill out the survey and return it. The wage and benefit chart prepared by Martinez was attached to his letter and a copy of the entire package was placed by Martinez in each employee's mailbox located in the employee cloakroom.

On November 9, the Respondent distributed a four-page letter addressed to "Dear Folks," which stated:

Of the many bookstores in Harvard Square (at last count-25!) we are pleased that you chose WordsWorth. Not all bookstores are alike. We think that you'll soon discover why WordsWorth stands apart from the rest. Simply stated, the essential factor in our store's success is you. Bookstores are unlike any other retail operation—customers develop a very personal attachment to a particular bookstore. In our case, there is no doubt that the employees are the primary contributors to WordsWorth appeal. With the incredibly diverse clientele that walks through our doors, we need knowledgeable and, above all, courteous people. And we've attracted such people over the years by treating employees with respect and a wage and benefit package that's without equal in the retail book business.

Our goal is simple: If you're committed to WordsWorth, we're committed to you. Unlike a typical retail business, we encourage people to stay—that's why you'll find so many long-term members on our staff. Throughout our policies, you'll discover benefits from Profit Sharing to Red Sox and Boston Symphony tickets—all intended to make your stay at WordsWorth as pleasant and rewarding as possible. Our store may not become your life's career, but for many it's become their home, and for those of you who are here for a short time, we hope that you find your stay a very positive experience.

As is our annual practice, we review our basic wage and benefit package and make the appropriate upgrades. We think that you'll find this year's revisions extremely generous and exciting. They are in large part a response to your needs and inputs.

Early in 1990, you will receive the new WordsWorth Employee Handbook. It will detail all of the policies that are summarized in the handouts today.

Each of you will receive a loose leaf binder with the Handbook which will document all of your wages and benefits as they accrue. Wendy Smith, our Wage and Benefit Director, will meet with you to explain this new policy in detail after the Holidays.

In addition to the sweeping changes summarized today, we are planning to establish store forums. At these meetings, you'll be able to discuss and suggest anything that concerns you.

WordsWorth values your work and contribution. We sincerely believe that we can learn from each other. Without that mutual respect, our store will become simply another mediocre bookstore. With your cooperation and trust, we can continue to be one of the best independent and personal bookshops.

Attached to this letter was the "New WordsWorth Wage Progression" beginning January 1, 1990, which showed a 60-cent increase in the starting wage and specific programmed increases throughout the year at defined intervals, with an end of the year wage slated at \$7.45 depending on the cost of living as determined by the Government's CPI index. There was also a summary of benefits, including paid holidays (double time for certain holidays), sick days, 3 personal days (a new benefit), vacations, tuition assistance loans on a first-come, first-served basis up to a total aggregate of \$1500, bereavement pay, severance pay, general loan fund, profit sharing, baseball and symphony tickets, and health and life insurance. All changes except the new starting rate were scheduled to take effect beginning January 1, 1990. The new hiring-in rate took effect immediately.

On November 9, 1989, Stavis held a meeting of all employees to discuss the new wage and benefit program. He opened the meeting by referring to the Respondent as one of the best bookstores in the country and thanked the assembled employees for their contribution to this achievement. He said that he wanted to go through a summary of the new handbook which was being prepared and started to discuss the items contained in the summary of wages and benefits outlined above. At this point, Martinez asked to speak and was allowed to do so. She spoke for several minutes.

Martinez had with her a book entitled "In the Age of the Smart Machine" by Shoshana Zuboff and referred to it in the course of her remarks. She said that she was pleased with the improvements that had been announced but claimed that they were due to the input of employees and were an indication of how important employee input really was. She insisted that the bookstore was no longer a family-run concern but was really a corporation so it needed to have its relationship with employees formalized. I credit her testimony that she said on this occasion that employees needed representation. She buttressed this statement by asserting that such ideas were not merely her own but were contained in the book she held up which outlined Japanese management styles. She suggested that everyone would have a better understanding of the problem facing the bookstore if they would read the book in question, asserting that what was needed was a "democratic organization," although she did not use the word "union." She asked Stavis if he agreed to holding employee meetings or forums and he nodded his assent. When the meeting was over, Stavis told Martinez that

he wanted to speak with her but some time elapsed before a meeting took place.

About 2 weeks later, Martinez went to Stavis' office and asked to speak with him. She again mentioned to him the need of employees to be organized and to have representation, telling Stavis that, "even if you are the best employer in the world, there are 70 employees in the store and that makes it impossible for you to address the needs of each of them." She said there should be a formal organization and representation at forums at which employees could discuss their problems. I credit her statement that Stavis replied, "The union is finished." He then went on to discuss what he characterized as "your chart." The reference was to the comparative table of wages and benefits which had been circulated a few weeks earlier to employees and which purported to outline the Respondent's wage and benefit package with those of other Harvard Square bookstores. He complained that there were several errors on "[her] chart." Stavis maintains, and Martinez denies, that she told him on this occasion that she was not for the Union. I discredit Stavis and credit the denial.

A day or two later, Martinez spoke with Silva on the same subjects in Silva's office. Silva told her that "your speech was ridiculous." Martinez objected, saying that she did not make a speech but was only making a statement concerning what she thought was important. Silva's reply was: "What do you know about research?" He went on to say that all the managers complained about her work. Again she objected, insisting that no manager had ever complained to her about anything. Silva said, "Well, probably they don't dare tell you." Martinez asked him to request any assistant manager who saw her doing anything wrong to tell her about it on the spot.

An incident occurred on Saturday, January 6, 1990, which bore an integral relationship to the discharge of Martinez on April 26.⁴ Martinez was working on the second floor of the store near the music department. Stavis testified that he saw her reading a book and told her to stop reading and go and wait on customers. (The Respondent has had a longstanding written rule that clerks are not permitted to read books while on duty.) According to Martinez, she replied that she was not reading the book but merely looking at the index as she was shelving it. Stavis testified that he was incensed by her reply. In any event, she put the book away and began to wait on customers. Stavis made an informal written note and entered it in her personnel file. It read:

Every employee knows the rules against reading on the job. I *did* tell her to stop reading. Finally, on any Saturday afternoon, the busiest day (and time) of the week, there were at least 20 customers on the second floor. After working in the store for two years, she should know that one of the most important parts of her job is to actively help customers, not to retire to a corner and read. [Emphasis in the original.]

⁴ The fact that the incident bore an integral relationship to her discharge does not mean that it had a causal relationship. There is a dispute in the record as to whether or not the store was busy at this point in time. It is a peripheral factual dispute which need not be resolved.

There is a great deal of testimony in the record concerning the question of the training of salesclerks and the giving of information to customers concerning the availability and location of books. The Respondent carries about 85,000 book titles and has computerized the information concerning these books. New clerks are given progressive training about the retrieval of this information, including hands-on training on computers and occasional instructional tours of duty at information desks which are located on the first and second floors of the stores. Because of the rapid turnover of personnel, this training is necessarily a large and ongoing effort. Depending on their knowledge and length of experience, clerks are designated as register trained, meaning that they are also capable and qualified to operate cash registers at checkout counters, or as information trained, meaning that they are capable and qualified to provide customers with a full range of information about requested books, including the availability of books which are not on shelves or which appear from the computer not to be in the store. The Respondent takes great pains to avoid telling a prospective customer that a requested book title is not available for fear that the customer will go elsewhere to make the requested purchase.

Despite her 2 years' experience in the store, Martinez was not regarded by the Respondent's management as being information trained, although it is clear that she had been waiting on customers throughout this period of time and providing them certain information about requested purchases, including information derived from computer terminals. There is a considerable difference of opinion among the Respondent's witnesses as to just what is meant by the phrase "information trained" or retrained and what degree or kind of information may be supplied to a customer by an "info-trained" clerk as distinguished from one who is not. After devoting considerable attention to this issue, the Respondent asserted that Martinez, who was assertedly guilty of providing book availability information without having successfully completed information training, was not actually discharged because of any infraction of the Respondent's rules in this regard.⁵

However, on or about February 15, Martinez was reprimanded on the floor by Assistant Manager Patricia Parker for having exceeded the bounds of proper information disclosure to a customer. She reported the incident to Silva. Martinez was giving the following written reprimand dated February 22, 1990:

On Saturday, January 6th, Hillel [Stavis] was compelled to ask that you stop reading and return to work. This was done only after it was determined that you were giving the books more than the cursory inspection needed for shelving. As one of WordsWorth's long term associates, you are aware that reading on the job is against company policy. That this should occur on a particularly busy Saturday with a store full of customers, many of whom could have used some help, is

⁵ Apparently the completion of information training has no direct bearing on wage rates paid to clerks. There is no wage category of "info-trained" clerk, as distinguished from one who is not, and there are "untrained" clerks like Martinez earning higher wages than other clerks who had been "info-trained," presumably because of longevity.

unacceptable. Nor is it fair that your co-workers should be hard at work while you take time out to read.

More recently, specifically last Thursday, Pat reiterated WordsWorth's policy of referring customer questions to the currently trained information person on the second floor. Your response was to argue the point on the floor in tones that were so vehement that Pat felt it necessary to take you off the floor to continue the conversation away from customers who were clearly upset at the exchange.

Since we have discussed both these issues before, both in your review and more recently in the conversation we had in November, I am forced to issue this warning in writing and remind you that any further infractions of this or other company policy may result in dismissal.

She was told to respond to this reprimand but was not given a specified period of time in which to do so.

An employee summary sheet placed in Martinez' file contains the following entries, apparently placed there by Silva:

1/6/90—2:50 pm. Hellel tells CM to stop reading and get to work.

1/18/90—CM showed up for 8-5 shift rather than 9-6 shift. She said she had checked with Kathy and Cion which I later confirmed. However, she apparently told them that I said she could make this switch if it was okay with them. I actually told her that I would check and let her know.

2/22/90—See attached warning. Christina's immediate response was to go downstairs and ask some other people if they would get a store meeting up to discuss how to help customers since she was getting contradictory messages. The following day, CM came to me first things [sic] and said that she wanted to set up an appointment "now" to get retrained on info. I explained that we'd be going through an entire retraining process with everyone, but that no one would start that until they were fully trained on the floor and register. She then said that she wanted more time on the register so she could "be fairly evaluated."

3/8/90—Spoke to CM and said we need to set up a time to discuss her response to her warning. She said that she knew and was writing up her response.

General comments from one manager's meeting; "seems very unhappy, but doesn't want to leave," "reading a lot," HK "often have to go and find the books myself when she does a book check," SK

3/15/90—Spoke with CM to again say that we needed to set up a time to discuss her warning and reminded her that she had told me she was writing out a response. Now she said she was a bad typist—I said, that didn't matter—and she said that perhaps tomorrow would be good.

On March 20, Martinez submitted a 2-1/2-page typewritten reply to the employee warning report which she had received on February 22. With regard to the January 6 incident, she insisted that she was working when Stavis asked her what she was doing and claimed that he had failed to respond to her answer or to make any indication at the time that she was violating company rules. Concerning the incident during

which Parker reprimanded her for improperly giving out information to customers, Martinez wrote that she was surprised that she was not allowed to use the computer terminal to obtain information for customers since she had been doing so for over a year and had never previously been reprimanded or cautioned in this regard. She also challenged an assertion in the reprimand that she had spoken vehemently to her supervisor in the presence of customers.

She repeated in her reply the fact that she had criticized Stavis' initial letter of August 18 warning employees against District 65 and noted that the criticism leveled against her work by Silva, when they had discussed this letter back in August, was the first time that her work had ever been criticized. She asked that the February 22 warning be removed from her file, that she be given proper computer information training, and that assistant managers be instructed to discuss with her on the spot any deficiencies in her work that they may have observed. Among her closing statements was the sentence "The quality control method that you seem to be introducing is increasingly losing ground as the modern world of business moves from authoritarian hostility to democratic participation."

Stavis testified that he was outraged by her written reply and felt that he should have fired her on the spot but decided instead to leave the question to assistant managers, who meet periodically to evaluate employees as well as other matters concerning the operation of the store. Stavis did speak with Martinez personally before any meeting of assistant managers had taken place. He testified that, during this conversation, he instructed her to approach customers and ask them if they need help. According to Stavis, she replied that she would not do so because customers might be academics who would be offended if a store clerk were to suggest that they purchase a particular book. I discredit his version of this conversation and credit Martinez' testimony to the effect that she told him that store clerks ought to be careful in recommending specific titles to academics because they might take offense at receiving such information from a clerk. I also credit her testimony that Stavis never specifically told her to approach customers and ask, "May I help?" that she never told Stavis that she would not approach customers for this purpose, and that she had consistently approached customers to assist them throughout the entire period of her employment. This exchange ended when Stavis asked Martinez sarcastically how she could tell from looking that a customer was an academic and whether academics wore signs advertising themselves as such.

In mid-April, Martinez' second annual review was due. Eight different assistant managers rated her on a two-page "confidential employee evaluation" form used by the Respondent for this purpose. The form contained blocks in which the rating official could check off categories ranging from "unacceptable" to "excellent" as applied to a whole host of employee characteristics. The form also contained spaces for the assistant manager's comments in narrative form, for the employee's reply comments, and for the assistant manager's recommendations and suggestions for improvement. According to the form, both the assistant manager and the employee were supposed to sign and date the completed review.

I note that the dates on each of the evaluation forms have been altered from what appears to be 4/11 to 4/14. From

these similar and recurring alterations, I conclude that the forms were tampered with. Martinez was not given any of the forms for her inspection and review and her signature does not appear on any of them. For that matter, most of the forms do not bear the signatures of the rating official.

There is testimony in the record from Parker and from Assistant Manager Kathy O'Neill that an assistant manager's meeting was held in mid-April, at which time all the managers present verbally recommended that Martinez be discharged. However, none of these managers made any such recommendation in writing and many, including Parker, made written recommendations relating to Martinez which were inconsistent with a discharge recommendation (e.g., that she should be given additional training). I discredit the testimony of Parker and O'Neill concerning recommendations that Martinez be discharged.

Early in April, the Respondent issued an employee handbook. Martinez took exception to some of its provisions and asked Wendy Smith, the human resources director, to have lunch with her to discuss her objections.⁶ They ate at Grindell's. During this meeting, Martinez asked Smith to remove the February 22 warning from her personnel file. Smith said that she could not do this and that Martinez would have to make her request to Stavis or to Silva.

Martinez also brought up the matter of the new handbook. She complained to Smith about the substitution policy set out in the handbook governing the right of employees to switch shifts with other employees when they needed a day off. Smith defended the policy, saying she thought it was a liberal one. Martinez also complained that the new handbook failed to include a grievance procedure and that the store needed to conduct periodic employee meetings to discuss employee complaints. I credit Martinez' testimony that she told Smith that she was going to have a meeting with some other employees to discuss these issues so that the employees could come up with a proposal, and that she expressed the opinion that the reason she thought that a union was important was that otherwise employees would be unable to bring their concerns to the attention of management. As an example, she mentioned the letter which she had written in response to the warning she had received. She showed it to Smith, complained that she had not received any response, and asked Smith when the Company was going to honor the requests she had made in her letter.

Following this meeting, Smith reported this conversation to Silva. A few days later, Martinez discussed her luncheon conversation with some other employees but took the matter no further.

On April 26, at the end of the workday, Silva called Martinez into the office. Both he and Stavis were present. Silva told her that she was being discharged because of her work performance and because her cash register "cash outs" were short. Martinez asked to see any cash sheets indicating that she had shorted the Company. Silva produced some sheets but they turned out to pertain to another employee. Stavis then spoke up to say that the cash sheets were not the problem. The problem was that the Company was dissatisfied

with her work. He informed her that, in lieu of the customary 2 weeks' notice, the Company would simply give her a check for 2 weeks' earnings along with accrued vacation pay. She asked for a written statement of dismissal and put the question to Stavis, "Is this the way you treat your employees?" I credit her testimony that Stavis replied, "You are a special case."

Respondent placed in Martinez' personnel file a termination report which stated "Dismissal as a result of repeated verbal warnings and a written warning regarding work performance." It was signed by Stavis on April 26. In response to a claim for unemployment compensation, Smith verbally informed the Massachusetts Department of Employment and Training that Martinez was discharged for poor performance regarding her work.

II. ANALYSIS AND CONCLUSIONS

There is little doubt that Stavis feared District 65, a union to which he had formerly belonged, and harbored an active, on-going animus toward it. As soon as he learned of the organizing effort, he told employees in writing that he strongly recommended against signing cards, citing a number of reasons. He disparaged the Union's ability to deliver for employees, warned of possible deception on its part in failing to disclose the amount of its dues and initiation fees, and warned employees that union organizers would tell them anything to get them to sign and to collect dues from them. More importantly, the Company responded emphatically to the specific shortcomings in the store which were the crux of the Union's campaign—lack of employee forums for the adjustment of grievances, low hiring-in wages, and asserted disparities between other wages and fringes paid to store employees in comparison with those offered by unionized competitors around Harvard Square. While increasing wages and benefits during the course of an organizing campaign was not charged in the complaint as a violation of the Act, such actions constitute clear evidence of animus and may be relied on in evaluating the Respondent's disposition toward the union effort.

The Respondent was well aware of the existence of the organizing campaign. Not only did the Charging Party notify Stavis in writing that it was organizing his store, it posted a signed notice in a conspicuous place in the store on which it voiced employee complaints and solicited support from employees. Stavis acknowledged his awareness of the campaign in the literature he circulated to counteract it.

Martinez was active on the Union's behalf. She signed a union card, attended many informal union meetings, did the research which led to the publication of a comparative chart of wages and benefits to which Stavis and others took exception, distributed the chart in employee mailboxes, and spoke up loud and clear at an employee meeting chiding the Respondent for its old fashioned ideas of management and calling for representation of employees and a democratic organization in the store to serve as a funnel for employee grievances. She also reiterated some of these ideas in a personal conversation with Stavis months later, as well as in the written response which she filed to the reprimand that was given to her in February. As late as April 12, during her luncheon meeting with the Respondent's human resources manager, she continued to take exception to store personnel practices.

⁶Wendy Smith is an admitted supervisor. In its brief, the Respondent described her as a confidential office clerical employee although she is elsewhere referred to as benefits manager or personnel manager.

One of the key facets of the Respondent's defense is that it could not have discharged Martinez for union activities because it was not even aware of her union involvement or sentiments. In support of this contention, the Respondent pointed out that Martinez did not sign the union organizing letter which was posted in the store, a fact which Martinez acknowledged but attempted to explain by saying that she had refrained from signing the letter she had helped to post so that she could continue to act as a mediator between union and antiunion factions in the store. While admitting that Martinez may have used such words as "representation" and "organization" in the course of lecturing the Respondent and its employees on the virtues of Japanese management styles, the Respondent disavowed any suggestion that it inferred from her lengthy and repeated statements that she might actually harbor pronoun sentiments because she never used the words "union" or "District 65." The contention is frivolous and disingenuous. Martinez directly criticized the Company's first antiunion letter in a discussion with Silva and was recognized by Stavis as the author of the comparative chart of wages and benefits when he referred to it in a communication as "your chart." It is quite clear that the Respondent was an antiunion employer who resisted the organization of its store and was well aware that the discriminatee was an outspoken supporter of the effort it opposed.

Another defense advanced by the Respondent was that the discharge which occurred on April 26 could not have been prompted by union considerations because, by that time, the union campaign was over and, to use Stavis' expression to Martinez, "the union [was] dead." This is simply Stavis' perception of what his employees were doing. The Respondent may have had every reason to believe that, in view of the rapid turnover of store personnel, the people who had signed the union solicitation letter in August were no longer around the following April. However, the one exception was Martinez, whose tenure at the store was longer than that of almost any clerk and who gave no hint of leaving. In mid-April, she gave fresh evidence of her continued interest in employee organizing activity, as well as her abiding dissatisfaction with store conditions, during the luncheon with Smith. Within 2 weeks thereafter, she was gone. It was not for some independent protected concerted activity of her own that the General Counsel argues Martinez was discharged. Rather, he argues that the discharge was prompted by the threat of a revival or continuation of union activities—the campaign of the previous autumn—a campaign the Respondent felt was over because the Company had addressed the causes of employee dissatisfaction with improvements in wages and benefits and because most of those who had generated the union effort were no longer around. The argument makes out a convincing *prima facie* case.

In the face of this evidence the Respondent insists that it discharged Martinez for poor job performance. In particular it relies on an incident on January 6, when she was caught reading when she should have been waiting on customers, and on a statement assertedly made to Stavis in late March when she refused an order to approach customers and ask, "May I help?" These assertions must be weighed in light of standard personnel practices of the store, taken together with the justifications it relied on for the action it took. To use Stavis' expression, "We have an incredible record of not fir-

ing people." The figures he recited were that, in 15 years, the Respondent had fired only about 20 to 30 employees.

The first incident relied on was that of reading on the job on January 6. By the Respondent's admitted standard, this was a trivial infraction. While it is a violation of company rules, it is normally not a dischargeable offense. Stavis testified, "In 15 years, I've said that to a lot of people 'stop reading and go to work.'" In every case, they have said, "I'm sorry. I'll go back to work." In this instance, Stavis became incensed, not because Martinez refused to stop reading and go to work, but because she had denied that she had been violating the company rule. Six weeks later she received a written reprimand arising out of this incident and 3-1/2 months later it became an integral part of the announced reason why she was discharged.

The claim is preposterous. This element of the Respondent's defense presents to the Board a classic and familiar instance in which a trivial infraction of rules, normally overlooked or redressed informally and without rancor, is seized on by an antiunion employer as an excuse for eliminating from its work force a known union supporter who has given fresh evidence of her unhappiness with job conditions and renewed evidence that she is going to do something about it.

The other leg of the Respondent's defense—that Martinez refused to greet prospective customers and to extend a willingness to help them in their search for books—is factually unfounded. Stavis distorted the cautionary warning from a clerical employee with an advanced academic degree—one who is now teaching on the faculty of a renowned university—that persons in the ranks of higher education might take offense at having their familiarity with the literature of their specialty supplemented by a salesclerk trying to push particular books. This is a far cry from a stated unwillingness to provide assistance to a customer. Stavis was angry at this colloquy and, according to his testimony, was disposed to fire Martinez—Dr. Martinez—on the spot, but thought better of it and decided to refer the matter to the judgment of assistant managers who were soon going to evaluate her job performance.

In mid-April, he received evaluations from eight different managers. She got a mixed review from different supervisors on various items but none was willing to put it in writing that she should be fired. On the precise question at issue—courtesy and helpfulness to customers—four rated her above average, three rated her as average, and only one, Parker, rated her as below average. These opinions undercut the legitimacy of any contention by the Respondent that Martinez was in fact removed for discourtesy or refusal to interact with prospective book buyers. Here again, the Respondent was indulging in pretext to achieve the elimination from its payroll of a dissident who did not follow the pattern of other dissidents and quit after short-term employment to find a better job. As such, the discharge of Cristina Martinez violated the provisions of Section 8(a)(1) and (3) of the Act, I so find and conclude.⁷

⁷In its brief, the Respondent made a detailed and elaborate argument that Martinez was a loner and did not engage in concerted, protected activities so her discharge could not be occasioned by such activities. This theory was not alleged in the complaint nor relied on by the General Counsel and is not part of the findings here.

CONCLUSIONS OF LAW

1. Bandicoot Corporation d/b/a WordsWorth is now and at all times material has been an employer engaged in commerce with the meaning of Section 2(2), (6), and (7) of the Act.

2. United Automobile, Aerospace & Agricultural Implement Workers, AFL-CIO, District 65 is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Cristina Martinez because of her membership in and activities on behalf of United Automobile, Aerospace & Agricultural Implement Workers, AFL-CIO, District 65, the Respondent violated Section 8(a)(1) and (3) of the Act. The aforesaid unfair labor practice has a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist from ant to take certain affirmative actions designed to effectuate the purposes and policies of the Act. The recommended Order will require the Respondent to offer full and immediate reinstatement to Cristina Martinez and to make her whole for any loss of earnings or benefits which she may have sustained by reason of the discrimination practiced against her in accordance with the *Woolworth* formula,⁸ with interest at the rate prescribed in the Tax Reform Act of 1986 for the overpayment and underpayment of income taxes. *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I will also recommend that the Respondent be required to post the usual notice, advising its employees of their rights ant of the results of this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Bandicoot Corporation d/b/a WordsWorth, Cambridge, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in or activities on behalf of United Automobile, Aerospace & Agricultural Implement Workers, AFL-CIO, District 65, or any other labor organization by discharging Cristina Martinez or otherwise discriminating against her in her hire or tenure.

(b) By any like or related means interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to Cristina Martinez full and immediate reinstatement to her former or substantially equivalent employment, without prejudice to her seniority or to other rights previously enjoyed, and make her whole for any loss of pay or

benefits by reason of the discrimination found, in the matter described above in the remedy section of this decision.

(b) Expunge from its personnel and pay records any disciplinary action taken against Cristina Martinez in violation of the Act and notify her in writing that such actions will not form the basis for future disciplinary actions.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at the Respondent's Cambridge, Massachusetts store copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹⁰If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge or otherwise discriminate against employees because of their membership in or activities on behalf of United Automobile, Aerospace & Agricultural Implement Workers, AFL-CIO, District 65, or any other labor organization.

WE WILL NOT by any like or related means interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by the National Labor Relations Act.

WE WILL offer full and immediate reinstatement to Cristina Martinez to her former or substantially equivalent employment, and WE WILL make her whole for any loss of pay or benefits which she may have suffered by reason of the discrimination practiced against her with interest.

WE WILL expunge from our personnel and pay records any disciplinary action taken against Cristina Martinez in violation of the Act and notify her in writing that such actions will not form the basis for future disciplinary actions.

BANDICOOT CORPORATION D/B/A WORDSWORTH

⁸F. W. *Woolworth Co.*, 90 NLRB 289 (1950).

⁹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.